Exhibit 2

Excerpts of NJDEP Response to Comments on Permit NJ0021016 – Comments 95-100 and 102-105

95. COMMENT: Part IV.G.4.e.vii authorizes NHSA to evaluate a CSO bypass (per the National CSO Policy) as one of the LTCP alternatives. Given that the Department indicates that this option is prohibited by state law, it is not apparent why this option is allowed to be assessed. The Department should determine whether this earlier adopted state rule was intended to restrict options otherwise authorized or mandated by the federal National CSO Policy to protect public health or otherwise allowed by the NJPDES rules.

The River Road Draft Permit and the Adams Street Draft Permit indicate that a change in regulation would be required to allow NHSA to bypass. We believe the Department is mistaken regarding bypass in the CSO context, as the Department incorporated the federal program requirements into its rules. Furthermore, the Department fails to address that pursuant to its regulations, NHSA can utilize non-biological approaches (i.e., maximize flows to the primary units, divert excess peak flows around the biological unit, recombine, disinfect, and still meet permit limits). N.J.A.C. 7:14A-13.12(a)3, expressly allows POTWs to modify their permit limitations and utilize excess primary capacity if they are maximizing flow to a plant as a means to reduce CSOs, whether through non-biological peak flow processing or, if permit limits cannot be met, through a bypass:

> (a) An applicant or permittee may request effluent limitations less stringent than those required by N.J.A.C. 7:14A-13.3, 13.4 or 13.6, which are applicable only during periods of excessive effluent flow due to precipitation events, provided one or more of the following criteria is met:
>
> 3. The facility receives flow from combined sewers. In such cases the permittee *shall be required to maximize the flow to the treatment facility* and minimize the flow through the combined sewer overflow. The permittee shall evaluate and implement options for eliminating the extraneous flow. *The options to be explored* shall include, but shall not be limited to, reducing or eliminating one or more overflows, *providing a reduced level of treatment for a portion of the flow*, and, in some cases, separation of the sanitary and storm sewers. The permit shall include a schedule addressing reduction or elimination of the excess flow as appropriate. Any discharge from combined sewer overflows shall be consistent with the USEPA final policy for combined sewer overflows. See 59 Fed. Reg. 18688 (April 19, 1994), which is incorporated at N.J.A.C. 7:14A-11 Appendix C.

Consistent with such an approach, the Draft NJPDES permits recognize that the National CSO policy would require maximizing the flows to be treated at the NHSA STP, including the use of a CSO bypass to accomplish that goal. However, the prohibition in N.J.A.C. 7:14A-23.13(m) applies to "untreated or partially treated wastewater to be discharged." In NHSA's situation, the blended wastewater would meet the NJPDES permit effluent limitations. As such, the blended effluent would be neither "untreated" nor "partially treated wastewater" as intended by this rule. The plant is designed to treat peak flows and meet permit limits through non-biological peak flow processing, which is otherwise authorized in the NJPDES rules. [25]

96. COMMENT: Section G.4.e.vii authorizes JMEUC to evaluate CSO bypass (per the National CSO Policy) as one of the LTCP alternatives. The Fact Sheet, however, indicates that such option is currently prohibited by state law, so it is not apparent why this option is allowed to be assessed. The Department should determine whether this earlier adopted state rule was intended to restrict options otherwise authorized or mandated by the federal National CSO Policy to protect public health. [9]

97. COMMENT: Regarding the River Road facility, several discharge options presently exist to allow for increased CSO flow processing and avoidance of public exposure to untreated wastewater. To ensure NMC compliance and LTCP implementation in the timeliest fashion, the ability to employ a CSO bypass or simply meet applicable effluent limits for this combined discharge to the Hudson River should be clarified. [25]

98. COMMENT: The City of Elizabeth maximizes the flow to JMEUC. What takes place at JMEUC has a significant impact upon the City in terms of the conveyance capabilities to the Trenton Avenue pump station as we are regulated in how much we can discharge. Therefore, we have a vested interest in blending because it will have an impact on the City of Elizabeth. [8]

99. COMMENT: The Department should consider adding additional detail from the National CSO Policy to help further clarify Part IV.G.4. As stated in the National CSO Policy, "[f]or approval of a CSO related bypass, the long-term CSO control plan, at a minimum, should provide justification for a cut-off point at which the flow will be diverted from the secondary treatment portion of the treatment plant, and provide a benefit-cost analysis demonstrating that conveyance of wet weather flow to the POTW for primary treatment is more beneficial than other CSO abatement alternatives such as storage and pump back for secondary treatment, sewer separation, or satellite treatment" (18693 FR /Vol. 59, No. 75). In the Draft permit Fact Sheet, the Department states that the "National Policy encourages permittees to consider the use of a bypass of secondary treatment in the evaluation of alternatives." It is more accurate to say "allows" rather than "encourages." [5] [11]

100.COMMENT: The Fact Sheet also notes that NJ regulations prohibit bypass and states that the Department "recognizes that the rule would need to be modified in order to allow bypasses as part of an approved LTCP." Under 40 CFR 122.41(m)(4), bypass is prohibited, but the rule provides for enforcement discretion where: the permittee shows that the bypass was unavoidable to prevent loss of life, personal injury or severe property damages; the permittee shows that there was no feasible alternative to the bypass; and the permittee submitted the required notice.

The Fact Sheet states under the *Evaluation of Alternatives* that in order for the Department "to consider a by-pass as a feasible alternative ..." This is inaccurate. The Fact Sheet should state, "in order for bypassing to be considered it must be demonstrated that there are no feasible alternatives to bypass."

The "no feasible alternative" analysis should be included in the LTCP. The National CSO Policy describes what this analysis should entail in more detail. [5] [11]

RESPONSE 95-100: In a letter to the Department dated October 9, 2014, Kate Anderson, Chief of EPA's Region 2 Clean Water Regulatory Branch, confirmed that blending of primary and secondary treated flows to meet existing effluent limitations may be allowed through a CSO permit if the proposal satisfies the factors described in Part II.C.7 of the CSO Control Policy, 59 Fed. Reg. at 18693-94, and those at 40 C.F.R. § 122.41(m). As stated:

> "NJDEP may provide a reopener clause in the reissued permit that would allow the permit to be reopened to add language approving a CSO related bypass [if the permittee] submits information demonstrating that the requirements in 40 CFR § 122.41(m)(4)(i) have been met. If the permit is reopened and modified to include a preapproved bypass, the approval would need to set conditions for when and how an approved bypass would occur."

If the permittees' no feasible alternatives analysis shows that blending would be appropriate during the term of this permit, and after examination of any adverse effects, the Department will consider a major permit modification to allow a deviation under N.J.A.C. 7:14A-23.2(b) from the prohibition against bypassing any portion of the treatment works at N.J.A.C. 7:14A-23.13(m) for CSO STPs. The Department maintains that this would constitute new information that meets the criteria of N.J.A.C.7:14A-16.4(b)2, thereby constituting cause for major modification or revocation and renewal of a permit.

Under Part IV.G.4.e.vii of the CSO permit, as part of their LTCP, permittees are required to evaluate alternative wet weather treatment protocols for reducing CSO events by maximizing the use of primary treatment capacity at the STP to meet the National CSO Policy's goal of making the greatest use of using existing plant infrastructure. Specifically, permittees shall also evaluate the feasibility of using the plant's excess primary treatment capacity with disinfection and dechlorination to increase the amount of primary treatment for flows that would otherwise be discharged through CSOs, while still meeting the STP's effluent limitations.

Although the Fact Sheets of the Draft permits state that the rule at N.J.A.C. 7:14A-23.13(m) would need to be modified to allow bypasses as part of an approved LTCP, the Department has reevaluated these rules and have found that an exemption is allowable under N.J.A.C. 7:14A-23.2(b). Such alternative wet weather treatment protocols may only be considered for STPs that receive combined sewer flows to meet the STP's effluent limitations, and may only be granted as a modification to the plant's CSO NJPDES permit. In such cases, the STP permittees may apply to the Department for a permit modification to include specific conditions when blending may be allowed under N.J.A.C. 7:14A-16.4 and -23.2(b).

N.J.A.C. 7:14A-13.12 applies to requests to modify wet weather effluent limitations and is not addressed by the CSO NJPDES permits and requires consideration of additional criteria described in the rule.

No changes have been made to the Final permit(s) as a result of these comments.

101. COMMENT: Clarification is needed on the potentially authorized discharge locations for JMEUC. Several discharge options presently exist to allow for increased CSO flow processing and avoidance of public exposure to untreated wastewater, yet only one of these

points is authorized by the Draft permit. To ensure NMC compliance and LTCP implementation in the timeliest fashion, the ability to employ a CSO bypass to the Elizabeth River should be allowed. [9]

RESPONSE 101: While it is premature to evaluate a CSO control alternative independent of the complete LTCP, it appears that the permittee is requesting that the Department consider a CSO bypass to the Elizabeth River. However, it is unclear as to whether or not this suggested bypass would be routed to a permitted outfall or to an alternative discharge location not currently authorized in the NJPDES CSO permit.

With respect to the issue of blending, please note that blending is intended to be utilized at the existing STP outfall since compliance with all existing NJPDES permit parameters is required. Any alternate discharge location would require authorization through a separate NJPDES permit action, including the development of the appropriate limits as well as a WQMP amendment, and would be subject to other rules and regulations.

No changes have been made to the Final permit(s) as a result of this comment.

102. COMMENT: The preamble statements made by EPA and cited to by the court in *Iowa League of Cities v. EPA,* 711 F.3d 844 (8th Cir. 2103) state that the federal bypass rule's purpose is to "ensure that users properly operate and maintain their treatment facilities . . . [pursuant to applicable] underlying technology-based standards," "by requiring incoming flows to move through the facility as it was designed to be operated" and "[l]ike the more general secondary treatment regulations, the bypass rule does not require the use of any particular treatment method or technology." With the permit effluent limitations establishing the threshold for the level of treatment required, as long as the blended effluent meets the permit limits it would neither fall under the N.J.A.C. 7:14A-23.13(m) prohibition nor the bypass provision. [25]

103. COMMENT: How does the emergency discharge provision of the NJPDES rules and the decision in *Iowa League of Cities v. EPA*, 711 F.3d 844 (8th Cir. 2013) apply at these POTWs for peak flow management, outside the federal/CSO bypass procedures? [9] [25]

104. COMMENT: If NHSA were to combine the existing 002 and 001 discharges to ensure full disinfection and, if necessary, dechlorination, and then discharge the combined flows out the existing outfall, NHSA would be in full compliance with the existing NJPDES limitations. Under *Iowa League of Cities v. EPA* and based upon Department precedent, this does not constitute a bypass under either state or federal law. [25]

105. COMMENT: Further insight is needed as to how the emergency discharge provisions of the NJPDES rules, National CSO Policy and Iowa League case affecting federal bypass provisions applicable to STPs interact with and identify allowable peak flow management approaches. It would seem that there is greater justification to process peak flows given the Iowa League decision. Clarification would save considerable resources in addressing LTCP objectives. [48]

RESPONSE 102-105: EPA's bypassing rule at 40 C.F.R. § 122.41(m) was upheld in an earlier federal appellate decision in *NRDC v.* EPA, 822 F.2d 104 (D.C. Cir. 1987). EPA maintains that the decision in *Iowa League of Cities v. EPA*, 711 F.3d 844 (8th Cir. 2013) is at odds with the D.C. Circuit's longstanding ruling on EPA's bypassing rule and EPA has determined that the *Iowa League of Cities* decision is only applicable in the 8th Circuit. To date, for the remainder of the nation outside the 8th Circuit, intentionally diverting flow around treatment processes will be considered a prohibited bypass unless the conditions of 40 C.F.R. § 122.41(m) are satisfied. This policy was reiterated in a letter dated October 9, 2014, from Kate Anderson, Chief, Clean Water Regulatory Branch, EPA Region 2, responding to a similar request from PVSC. Ms. Anderson's letter is part of the administrative record.

Moreover, Section 510 of the CWA provides that state rules will supersede less stringent federal regulations. 33 U.S.C.A. § 1370. The Department's NJPDES rules, which are promulgated under New Jersey's WPCA, N.J.S.A. 58:10A-1 et seq., may restrict or prohibit bypassing in circumstances that might otherwise be permissible under federal law. Permittees are required to comply with the more stringent of the federal regulations and the Department's regulations before a bypass may be permitted. Please refer to **RESPONSE 95-100** in Section D of the Response to Comments document.

No changes have been made to the Final permit(s) as a result of these comments.

106. COMMENT: Blending has the potential to provide immediate environmental and public health benefits to the local community, in accordance with the federal National CSO Policy. As necessary, the Department could grant a waiver to N.J.A.C. 7:14A 23.13(m) that addresses facility design to accomplish this goal. We request the Department's input and evaluation of these issues prior to the finalizing of this Draft permit. [25]

RESPONSE 106: Although the Fact Sheets of the Draft permits state that the rule at N.J.A.C. 7:14A-23.13(m) would need to be modified to allow bypasses as part of an approved LTCP, the Department has reevaluated these rules and has found that an exemption is allowable under N.J.A.C. 7:14A-23.2(b). Such alternative wet weather treatment protocols may only be considered for STPs that receive combined sewer flows to meet the STP's effluent limitations, and may only be granted as a modification to the CSO NJPDES CSO permit. In such cases, the STP permittees may apply to the Department for a permit modification to include specific conditions when blending may be allowed under N.J.A.C. 7:14A-16.4 and -23.2(b).

Waivers are considered only on a case-by-case basis. The Department will not consider or pre-judge whether a deviation or "waiver" is appropriate without a specific application that provides the information required by N.J.A.C. 7:14A-23.2 and/or N.J.A.C. 7:1B-2. Please also refer to **RESPONSE 95-100** concerning blending of Section D of this Response to Comments document.

No changes have been made to the Final permit(s) as a result of this comment.

107. COMMENT: The seventh bullet in the PVSC NJPDES permit discusses CSO related bypasses of the secondary treatment portion of the STP as a CSO control alternative that can be